

GUIDE TO PROPOSED EDITS AND AMENDMENTS

Title 14

Division 7

Chapter 8.2 Electronic Waste Recovery and Recycling

Global Changes in Proposed Regulation

The following changes were made globally throughout the regulation:

1. All references to the term “End-Use Destination” were deleted and replaced by the term “Initial Destination” or “Ultimate Disposition”, as applicable.
2. Use of the unclear conjunctive “and/or” was edited to use either “and” or “or”, as appropriate.

Article 1. General Provisions and Definitions

Section 18660.5 Definitions.

Definition numbering was adjusted to reflect deletions and additions.

The definition for “Bare Panel” was edited to remove the word “gas” from “gas plasma” to conform with common technology terminology and wording in Title 22. The definition was amended to account for a circumstance encountered by recyclers during dismantling and to avoid the release of a hazardous material.

The definition of “End-Use Destination” was deleted to avoid confusion caused when Treatment Residuals are shipped to an Initial Destination that is not an Ultimate Disposition.

The definition of “Further Treat” was edited and amended to clarify what treatment means and reflect that treatment does not necessarily result in increased marketability.

The definition of “Initial Destination” was added to replace “End-Use Destination” and to clarify and distinguish a certain location in the flow of residual material management.

The definition of “Proof of Approval” was edited to better reflect how the status of approval is used by both participants and CalRecycle, and where that status is maintained.

The definition of “Treatment Residuals” was edited to clarify its relationship to the covered electronic waste (CEW) recycling program and associated payment system requirements, as well as how documents associated with the material may be used.

The definition of “Ultimate Disposition” was added to describe the final status of Treatment Residuals and to clarify and distinguish that from interim statuses that may occur in the course of material management.

Article 2.0. Electronic Waste Payment System – Applicability and Limitations, Document Submittals, records, Audits and Net Cost Report

Section 18660.6. Applicability and Limitations.

Subsection (h) was edited to move limitations relating to exports of CEW to a new subsection (j). It was also amended to place new limitations and allowances on the management of treatment residuals relative to the requirements of the CEW recycling program and associated payment system. Specifically, the amendments are intended to encourage recycling to the extent feasible, allow for disposal as necessary, and establish the authority for CalRecycle to require certain demonstrations through documentation to ensure compliance with applicable law.

Subsection (j) was added as a place to move a portion of the original subsection (h) relating to the export of CEW and to provide clarity to associated limitations.

Section 18660.7. Document Submittals.

Subsection (b) was edited to reflect that more than one person may have specified authorities within an approved collector or approved recycler application or operation.

Subsection (f) was added to clarify the scope of liability associated with the use of documents that contain false statements or representations. This relates to Article 6 of this Chapter, Administrative Civil Penalties.

Section 18660.8. Records.

Subsection (a) was edited to clarify what number is required and to remove extraneous information management requirements. In this case, the responsible parties are the approved participants, hence the names and telephone numbers are not required.

Section 18660.10. Net Cost Report.

Subsection (c)(1)(B) was edited to clarify the material involved (Treatment Residuals) rather than a location.

Article 2.1. Electronic Waste Payment System – Applications for Approval

Section 18660.13. Additional Application Requirements for Recyclers.

Subsection (a)(3)(A) was edited to expand the scope of applicable regulations generally administered by the Department of Toxic Substances Control (DTSC) relating to hazardous waste management. Title 22 of Chapter 23 of the California Code of Regulations only addresses the management of universal waste, while the management of CEW may involve activities in the larger realm of hazardous waste (Division 4.5) and thus be applicable law to the program and subject to compliance.

Subsection (a)(6)(A)1. was edited to delete a typographic duplication error.

Subsection (a)(6)(A)2. was amended to clarify the apparent conflict between this certification statement relating to recyclers not charging fees to collectors and the allowance in Section 18660.6(d) to charge fees under certain circumstances.

Section 18660.15. CalRecycle Review of Applications.

Subsection (c)(1) was edited to clarify the issuance of a proof of approval, moving away from a suggestion that it will be a physical document and allowing for future electronic management of this status. This conforms with edits to the definition of “Proof of Approval” in section 18600.5(a)(32).

Section 18660.16. Approval Term and Applications for Renewal.

Subsections (a) and (b) were edited to reflect that the conditions of the approval apply to current approved application and not just the original application.

Subsection (c) was edited to remove a hyphen typographical error (“re-apply”).

Subsection (d) was edited to use the term “reapply” instead of “renew”. This change allows for the receipt and processing of applications without exposing an approval status to unwarranted termination in the case of a delayed renewal. Subpart (3) was edited to comport with the use of the proof of approval as some other than a physical object.

Subsection (e) was added to clarify that a participant can withdraw from the program at any time via a written notice.

Section 18660.17. Prohibited Activities.

Subsection (a) was edited to clarify that the consequences of a prohibited activity extend to all applications and not just renewals. This conforms with Public Resources Code section 42474(e), which provides CalRecycle the authority to protect the integrity of the program by excluding entities with a negative track-record.

Subpart (7) of subsection (a) was edited to conform with the evolving use of the proof of approval.

Subpart (13) of subsection (a) was edited to clarify its applicability to approved applications.

Subsection (b) was edited to clarify its applicability to all applications, as well as address the use of the proof of approval.

Section 18660.18. Changes to Information Contained in an Approved Application.

Section 18660.18 was amended to reflect its applicability to information and not to the application, per se.

Sections (a) and (b) were edited to streamline the requirements and methods by which an approved participant shall update information contained in an application. This is intended to avoid lapses in program information.

Section 18660.19. Appeal of Denial, Suspension or Revocation of Approval.

Subsection (c) was edited to clarify to whom an appeal shall be addressed.

Article 2.2. Electronic Waste Payment System – Business Requirements

Section 18660.20. Requirements for an Approved Collector.

Subsection (g) was amended to clarify which information from the proof of approval is required to be transferred to a recycler.

Subsection (j)(1)(A) was edited to fix a typographic error ("an" instead of "a").

Section 18660.21. Requirements for an Approved Recycler.

Subsection (b)(5)(B) was edited and amended to clarify the scope of required recordkeeping and to address the deletion of the term "End-Use Destination".

Subsection (l)(1) was amended to clarify that certified unit counts and weights are required and conform with existing requirements in preceding subsection (k).

Subsection (l)(2) was amended to clarify that certified unit counts and weights are required and conform with existing requirements in preceding subsection (k).

Subsection (l)(2)(B) was amended to clarify and distinguish between information established by the recycler and that provided by the collector.

Subsection (l)(4) was edited and amended to clarify the scope of applicable records that shall be established or maintained.

Article 2.3. Electronic Waste Payment System – Recycling Payment Claims

Section 18660.22. General Requirements for Recycling Payment Claims.

Subsection (a)(5) was edited to remove reference to Section 18660.23, which has been deleted and held in reserve.

Subsection (a)(7) was edited and amended to clarify required and allowable statuses of treatment residuals associated with CEW being claimed for payment. It was also edited to conform with reasonable legal standards and avoid duplication between subpart 4. and .5.

Subsection (b) was edited to remove reference to Section 18660.23, which has been deleted and held in reserve.

Subsection (c)(1) was edited and amended to clarify the scope of CEW addressed and requirements with associated treatment residuals. Changes conform with the deletion of Section 18660.23. The edits also eliminate the requirement to ship plasma panel glass derived from the dismantling (cancellation) of non-CRT devices prior to submitting a claim, as this requirement was determined to be overly burdensome and CalRecycle maintains the ability to subsequently seek disposition documentation.

Subparts (B)1. and 2. of subsection (c)(1) was added to clarify that all types of CRT glass, as defined in Chapter 23 of Title 22 of the California Code of Regulations shall be accounted for when fulfilling the requirements of this section.

Subsection (c)(2) was edited to remove a certain information item requirement that is problematic to comply with. The subsection was amended to expand the scope of tracking treatment residual that remain regulated material, which complements the elimination of the plasma panel shipping requirement in (c)(1). This ensures the ability to confirm compliant disposition.

Subsection (f) was edited to remove reference to Section 18660.23, which has been deleted and held in reserve.

Subsection (g) was edited to remove reference to Section 18660.23, which has been deleted and held in reserve.

~~Section 18660.23. RESERVED Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT-Containing CEWs through Crushing or Shredding.~~

This section was deleted and placed in reserve. The section pertained to an operational practice (crushing and shredding) that is no longer used to cancel CRT-containing CEW. The method has been edited from section 18660.32 as well.

Section 18660.24. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of CRTs or CRT-Containing CEWs through Dismantling to a Bare CRT After Relieving the Vacuum.

Subsection (c) was edited and amended to include the possibility that a recycler may ship CRT glass cullet in addition to bare CRTs, and to conform with the “end-use” vs. “initial” destination changes.

Subsection (d) was amended to clarify that a claim reporting month is established by the first shipment of CRTs or CRT glass cullet derived from the claimed CEW. This has important connections to the amount of time the recycler has to submit a claim (45 days from the end of claim reporting month) and avoids untimely claims.

Subsection (e) was edited to conform with the elimination of “end-use” and addition of “initial” destinations. It was also amended to clarify that shipment means moving material off-site, and that legal disposal may be a destination.

Subsection (g) was edited and amended to clarify the scope of material covered by required documentation and the span of time encompassed. Edits and amendments were made to conform with the elimination of “end-use” and addition of “initial” destinations. Edits and amendments were made to

clarify and better reflect the real-world flow of shipped CRTs or CRT glass cullet treatment residual, as well as ensure the ability of CalRecycle to determine compliant material management.

Subsection (h) was edited to correct a typographic error, changing “qualification” to “quantification”.

Section 18660.25. Additional Requirements for Recycling Payment Claims to Demonstrate Cancellation of Non-CRT-Containing CEWs.

Subsection (a) was edited to eliminate reference to a cancellation method deleted from section 18600.32.

Subsection (d) was amended to clarify the start of a claim reporting month.

Subsection (e) was edited to eliminate reference to a cancellation method deleted from section 18600.32.

Subsection (e)(1) was edited to conform with the elimination of the requirement to ship certain Treatment Residuals prior to submitting a non-CRT CEW recycling claim.

Subsection (e)(4) was edited to remove a requirement that in practice is unrealistic to perfectly conform with due to condition of devices and access to the serial numbers. The subsection was also amended to clarify the individual weight requirement.

Subsection (f) was edited to eliminate reference to a cancellation method deleted from section 18600.32.

Subsection (g) was edited and amended to change the treatment residuals of focus from circuit boards to bare plasma panels and lamps. This was done because circuit boards typically cease being regulated material and are instead managed as scrap metal. Bare plasma panels and lamps typically continue to be regulated as a hazardous or universal waste and there remains a compelling interest to ensure compliant management and disposition. The edits and amendments also clarify the span of time applicable to documents, the requirement to establish certified weights, and the scope of required documents. Edits and amendments were made to clarify and better reflect the real-world management of treatment residuals, as well as ensure the ability of CalRecycle to determine compliant material management.

Subsection (h) was edited to correct a typographic error, changing “qualification” to “quantification”. It was also amended to include additional treatment residuals in claim documentation requirements.

§ 18660.31. Appeal of Denied or Adjusted Recycling Payment Claims.

Subsections (a) and (b) were edited to clarify details of submitting an appeal.

Subsection (g) was added to correlate with the appeal mechanisms afforded in Sections 18660.19 (denied applications) and 18660.39 (denied manufacturer claims).

Article 2.4. Electronic Waste Payment System – Cancellation Methods, Recovery Payment Rate, and Combined Recovery and Recycling Payment Rate

Section 18660.32. Cancellation Methods.

Subsections (c)(1) and (3) were deleted to remove reference to cancellation methods involving crushing or shredding. While these types of actions may be conducted to further treat residuals, they are not currently practices used to cancel CEW. The subsections were renumbered accordingly.

Section 18660.33. Standard Statewide Recovery Payment Rate.

Subsection (a) was edited to remove a typographical error. There is no such thing as a “*Combined*” Recovery Payment Rate.

Article 2.5. Electronic Waste Payment System – Manufacturer Payments

Section 18660.37. Manufacturer Payment Claims.

Subsection (g) was edited to better reflect current electronic waste recycling fee levels used for the purposes of example calculations.

§ 18660.39. Appeal of Denied or Adjusted Manufacturer Payment Claims.

This section was edited and amended to clarify and conform with the administrative appeals afforded in other areas of this Chapter, specifically 18660.19 and 18660.31

Article 6. Administrative Civil Penalties

General

Article 6, Administrative Civil Penalties, was added to implement a civil liability facet to the CEW recycling payment system. Public Resources Code (PRC) 42474 vests CalRecycle with the authority to administratively impose civil liabilities. Article 6 establishes a framework to implement civil liabilities for the failure to pay the CEW recycling fee, manufacturer non-compliance, and false statements or representations. The process and procedures set forth in Article 6 ensure CalRecycle has the ability to exercise its authority and impose civil liabilities. The amendment in subsection 18660.7(f) clarifying the scope of liability associated with the use of documents that contain false statements or representations also relates to Article 6 requirements.

The amendments are intended to protect the integrity of the CEW program and promote compliance with the CEW program’s rules and regulations by acting as a deterrent to non-compliant behavior, as well as providing an incentive for industry compliance. The amendments are also intended to promote a level playing field between program participants and foster fair business practices.

Section 18660.44. Procedure for Imposing Civil Liabilities for False Statements or Representations.

This section provides procedures for implementing civil liabilities for false statements or representations. PRC section 42474(d) states that CalRecycle may administratively impose civil liability (penalties) on a person "... that makes a false statement or representation in any document filed, submitted, maintained or used for purposes of compliance..." with the Electronic Waste Recycling Act and associated regulations, including those related to the CEW program.

The amendments set forth requirements on how those penalties can be imposed by CalRecycle, such as: criteria and additional factors for assessing penalties, steps to implement civil penalties (Notice of Violation and accusation), service requirements, and hearing process.

Section 18660.45. Procedure for Imposing Civil Liabilities for Failure to Pay a Covered Electronic Waste Recycling Fee.

This section provides procedures for implementing civil liabilities for failure to pay the CEW recycling fee pursuant to PRC section 42474(a). The administrative procedures set forth in Section 18660.44(c)-(i) shall also apply to civil liabilities imposed pursuant to PRC section 42474(a).

Section 18660.46. Procedure for Imposing Civil Liabilities for Failure to Comply with Requirements for Manufacturers

This section provides procedures for implementing civil liabilities for failure to comply with requirements for manufacturers pursuant to PRC section 42474(c). The administrative procedures set forth in Section 18660.44(b)-(i) shall also apply to civil liabilities imposed pursuant to PRC section 42474(c).